

REMARKS

Applicants respectfully request reconsideration and allowance.

Applicants acknowledge with appreciation that claims 25, 26, 29-32 are allowed.

Amended claims 10, 33 and 35 reflect re-wording in their preambles consistent with the previously presented claims. The amendments are intended to be directed to matters of form, consistent with the examination of this application, avoid new issues, and are not intended to further restrict claim scope.

The boat deck or boat hull defined by claims 1, 4, 5 and 33 - novel and unobvious.

It is respectfully submitted that claims 1, 4, 5 and 33 define novel inventions over the Akimoto reference (U.S. Patent No. 4986,860). The rejection should be reconsidered and withdrawn.

Before addressing the rejection, it is important to understand what the claims define. Claims 1, 4, 5 and 33 define a boat deck or boat hull, and they do so now. Both before and after the March 24, 2003 Amendment, these claims were directed to a boat deck or a boat hull. It is without question that after the March 24, 2003 Amendment, the claims are directed to a boat deck or boat hull.

Claim 1 defines the invention being claimed as “[a] boat deck or boat hull.” Claim 1 was and remains directed to a boat deck or a boat hull.

Claim 4 depends from claim 1 and defines the boat deck or boat hull further by stating that “said outer layer also includes a polyvinylchloride material to form an acrylic-polyvinylchloride outer layer.”

Claim 5 depends from claim 1 and defines the boat deck or boat hull further by stating that “said foam core also includes polyvinylchloride material to form an acrylic-polyvinylchloride foam core.”

Claim 33 specifically states that "said composite comprises a boat deck."

It is surprising indeed to find these claims rejected under 35 U.S.C. 102(b) over the Akimoto reference.

The Akimoto reference does not describe or disclose a boat deck or a boat hull. Attention is respectfully invited to: Hockerson-Halberstadt Inc. v. Avia Group International Inc., 58 USPQ2d (BNA) 1487, 1491 (Fed. Cir. 2000); Ex parte Brown, 19 USPQ2d (BNA) 1609, 1612 (BOPI 1990) ("since the prior art is silent as to this feature, we are unable to sustain the rejection ..."); Ex parte Isaksen 23 USPQ2d (BNA) 1001, 1006 (BOPI 2001), ("Forbes patent[s] are completely silent as to any sharpening effect and do not describe with any specificity what results ... magnetic treatment had on the razor blade edge," rejection reversed).

Applicants request the Examiner to supply an Examiner's declaration since the reference simply does not teach, nor disclose a boat deck or a boat hull.

So what does the Office Action do to manufacture a rejection? It seeks to erase the very words from each and every claim that define the structure being claimed. The Office Action reports that the Examiner has chosen to ignore the claim language "[a] boat deck or boat hull..." in claims 1, 4, 5 and 33.

Applicants have also gleaned from the Office Action that the Examiner opines, for instance, claim 1 is complete after erasing "A boat deck or boat hull comprising..." They do point out, however, that the resulting butchered language does not define their invention.

Having read the old Kropa v. Robi case cited in the Office Action, and considered the reasoning advanced in the Office Action, the point remains: the inventions are to a boat deck or boat hull.

It is not for the Examiner to re-write the claims an excise language defining the metes and bounds of the inventions claimed. That contravenes 35 U.S.C. 112(2).

This rejection should be reconsidered and withdrawn.

Claims 2 and 35 define a boat deck or boat hull - novel and unobvious

It is respectfully submitted that the rejection of claim 2 and 35 under 35 USC 103(a) over the Akimoto reference (U.S. Patent No. 4,986,860) in view of either the Steward or Sharper references should be reconsidered and withdrawn.

"[I]t is incumbent upon the examiner to identify some suggestion to combine the references or make the modification." Ex parte Askman, Appeal No. 96-1548 (June 10, 1999) at page 5, quoting In re Mayne, 104 F.3d 1339, 1342 (Fed. Cir. 1997). The factual basis for an alleged suggestion "cannot 'be resolved on subjective belief and unknown authority.'" Ex parte Metcalf, 67 USPQ2d 1633, 635 (BOPI 2003), quoting In re Lee, 277 F.3d 1338, 1343-44 (Fed. Cir. 2002).

The claims define the invention as a "boat deck or boat hull" and that structure is said to be comprised of a composite, with the composite being further defined. Claim 2 depends from novel claim 1 and defines the boat deck or boat hull, formed from a composite, in which the composite structure further comprises an acrylic inner layer attached to at least a portion of said form core. Claim 35 depends from claim 2 and further defines the boat deck or boat hull "wherein said outer layer includes a polyvinylchloride material to form an acrylic - polyvinylchloride outer layer." In short, claim 2 and claim 35 defined a boat deck or a boat hull before and after the March 24, 2003 Amendment.

On the other hand the Office Action willfully ignores the affirmative claim language "boat deck or boat hull." The citation to Kropa v. Robi, 88 USPQ 478 (CCPA 1951) is said to excuse the studied indifference to the claim language. It is noted that the case does not support a refusal to examine the invention as claimed.

The fact is that the cited Akimoto reference does not disclose, does not describe and does not suggest a boat deck or a boat hull. Attention is again respectfully invited to: Hockerson-Halberstadt Inc. v. Avia Group International Inc., 58 USPQ2d at 1491; Ex parte Brown, 19 USPQ2d (BNA) at 1612; Ex parte Isaksen 23 USPQ2d (BNA) at 1006.

These references are only cited with respect to vehicle trim (Akimoto (USP 4,986,860) further in view of Steward (USP 4,211,590) or Stamper (USP 4,256,797)).

Vehicle trim is a decorative or ornamental trim piece. Vehicle trim would not have suggested the claimed boat deck or boat hull.

The claims are not directed to vehicle (car or truck) trim. These claims are not to a camper top. These claims are not directed to a cooler.

This rejection should be withdrawn.

Claims 9 and 23 define a boat deck or boat hull - novel and unobvious

It is respectfully submitted that claims 9 and 23 define unobvious inventions over the Akimoto reference as applied to claim 1 when taken in view of Fay (USP 4,053,545) .

Claims 9 and 10 defined a boat deck or a boat hull before and after the March 24, 2003 Amendment.

Claim 9 depends from claim 1 and defines the boat deck or boat hull further by stating "said outer layer is attached to said foam core by an acrylic adhesive."

These claimed inventions would have been unobvious over the Akimoto reference even if it would have been combined with the Fay reference.

It is respectfully emphasized that neither reference pertains to marine utilities, nor is either suggestive of a boat hull or boat deck.

Attention is again respectfully invited to: Hockerson-Halberstadt Inc. v. Avia Group International Inc., 58 USPQ2d at 1491; Ex parte Brown, 19 USPQ2d (BNA) at 1612; Ex parte Isaksen 23 USPQ2d (BNA) at 1006.

The Akimoto reference is also apparently silent with respect to an acrylic adhesive.

Their combination would appear grounded in improper hindsight.

Furthermore, even if they would have been combined, which is not conceded, their combined teachings would not have suggested a boat hull on a boat deck.

Claims 10, 11, and 13-15 - novel and unobvious

The claims define a boat hull or boat deck and would not have been obvious over under 35 U.S.C. §103(a) over the Akimoto reference (USP 4,986,860) in view of Steward (USP 4,211,590) or Stamper (USP 4,256,797) and further in view of Fay (USP 4,053,545).

Again, it is clear from the developed record that claims 10, 11, and 13-15 defined a structure: boat hull or boat deck. The claims defined a boat hull or boat deck both before and after the March 24, 2003 Amendment.

Claim 10 depends from claim 2 and recites “said inner layer is attached to said foam core by an acrylic adhesive.”

The Office Action does not address this claim language.

Claim 11 defines a multi-layer composite structure, which is a boat deck, said multi-layer structure comprising: an extruded outer layer of acrylic; an acrylic foam core attached at a first surface to said outer layer by an acrylic glue; and an inside layer of acrylic attached to a second surface of said foam core by an acrylic glue, wherein said composite is formed while avoiding the use of styrene.

The Office Action does not address the language in claim 11 that specifies that the composite structure is a boat deck.

Claim 13 depends from claim 11 and states said outer layer also includes a polyvinylchloride material to form an acrylic-polyvinylchloride outer layer.

Claim 14 depends from claim 11 and states "said foam core also includes a polyvinylchloride material to form an acrylic-polyvinylchloride foam core."

Claim 15 depends from claim 13 and states "said foam core also includes a polyvinylchloride material to form an acrylic-polyvinylchloride foam core."

Instead of treating the claim language, the Office Action erases the very words defining the invention being claimed and then applies the prior art against the fictional claims.

It appears that not one single applied reference discloses or would have suggested a boat hull or boat deck. Attention is again respectfully invited to: Hockerson-Halberstadt Inc. v. Avia Group International Inc., 58 USPQ2d at 1491; Ex parte Brown, 19 USPQ2d (BNA) at 1612; Ex parte Isaksen 23 USPQ2d (BNA) at 1006.

The Akimoto reference does not disclose the use of an acrylic adhesive.

The Steward reference does not disclose the use of an acrylic adhesive.

The Fay reference does not disclose the use of an acrylic adhesive. Like the other references, the Fay reference does not pertain to boat hulls, boat decks or marine utilities (structure of marine vessels, etc.).

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Non-elected Claims 16-22

Non-elected method claims 16-22 can be canceled by an Examiner's Amendment if the remaining claims are allowed.

Please telephone the undersigned to indicate the disposition.

Conclusion:

Applicants have endeavored to respond to the Office Action and respectfully submit that their claims do indeed define novel and unobvious inventions. Applicants respectfully submit their case is ready for allowance, and notice to such effect is respectfully solicited.

Respectfully submitted,

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